IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Crl.Rev.Pet.No. 3154 of 2007()

CRA.325/2006 of ADDL.SESSIONS COURT, (ADHOC), ERNAKULAM
CC.591/2003 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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REVN. PETITIONER: APPELLANT/1ST ACCUSED:

MANAF, AGED 34 YEARS,
S/O. ABDUL AZEEZ, HOUSE NO.CC.11/1150,
THURUTHY DESOM, FORT KOCHI VILLAGE.

BY ADV. SRI.T.H.ABDUL AZEEZ

RESPONDENTS: RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
FORT KOCHI BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3154 OF 2007 D

Dated this the 10th day of September, 2007

O R D E R

The revision petitioner, who was the 1st accused in C.C.No.591/03 on the file of the JFCM-I, Kochi for an offence punishable under section 379 IPC, challenges the conviction entered and the sentence passed against him for the aforementioned offence.

2. The case of the prosecution is that at about 1.00 a.m. on 17.9.2002 the three accused persons had in furtherance of their common intention to do so committed theft of a generator worth Rs.35,000/- belonging to PW1 from the parade ground of Fort Kochi and it was later recovered from the house of the 1st accused consequent on his confession statement.

3. On the side of the prosecution, 3 witnesses were examined as PWs 1 to 3 and 9 documents were got marked as Exts.P1 to P9.

4. All the accused persons denied the incriminating circumstances put to them from the evidence of the prosecution and maintained their innocence. They did not however adduce any defence evidence.

5. The learned Magistrate after trial, as per judgment dated 7.4.06 acquitted accused Nos.2 and 3 but convicted the revision petitioner (A1) of the offence and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs.2,000/- (Rupees two thousand only) and on default to pay the fine, to suffer rigorous imprisonment for three months. The revision petitioner preferred an appeal before the Sessions Court, Ernakulam as Crl.Appeal No.325/06. As per judgment dated 19.7.07 the Additional Sessions Judge (Adhoc-I), Ernakulam dismissed the said appeal. Hence, this revision.

6. Eventhough the learned counsel for the revision petitioner assailed the conviction recorded against him on various grounds, since the conviction was entered after a careful evaluation of the oral and documentary evidence in the case, there is little scope for interference by this court, sitting in the rarefied revisional jurisdiction. The conviction is accordingly confirmed.

7. What now survives for consideration is the question of adequacy of sentence imposed on the revision petitioner. It is true that the generator in question was recovered from the house of A1 (revision petitioner) consequent on his confession statement. But it is significant to note that the generator of the kind involved in this

case cannot be removed by a person single handedly. The theft must have been committed at least by two or more persons and A2 and A3 were really given the benefit of doubt and the revision petitioner was convicted mainly on the basis of the confession leading to the recovery of the generator. It was got enquired by this court as to whether the revision petitioner has got any previous criminal antecedents and it has been informed that he is not involved in any other crime. He was aged 30 years on the date of occurrence. Such being the position, I am of the view that the revision petitioner does not deserve incarceration for three months and that interests of justice will be adequately met by imposing a sentence of imprisonment for one month as against three months imposed by the lower appellate court. Accordingly, the sentence imposed on the revision petitioner is reduced to one month for his conviction under section 379 IPC. Set off under section 428 Cr.P.C. is allowed.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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